

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JOSEPH CONTE,

Plaintiff,

22 Civ.

v.

COMPLAINT

LONG ISLAND RAILROAD COMPANY,

JURY TRIAL REQUESTED

Defendant.

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Plaintiff, by his attorneys, Flynn & Wietzke, PC, complains of the Defendant and alleges:

**THE PARTIES**

1. The plaintiff is a resident of the State of New York, County of Suffolk, and City of Shirley.
2. The defendant is a railroad carrier corporation providing railroad transportation, in interstate commerce by rail and operates a railroad system and railroad yards within the jurisdiction of this Court, with a usual place of business in New York.
3. Prior to September 20, 2019, and at all times hereinafter mentioned, the defendant employed the plaintiff as a Locomotive Engineer under its direction, supervision and control and in furtherance of defendant's business in interstate commerce.
4. Prior to September 20, 2019 and at all times hereinafter mentioned, the defendant maintained, operated and controlled a train containing Car No. 7750 travelling from NY Pennsylvania Station, New York, New York to Babylon, New York which contained defendant's tracks, rails, switches, sidings, roadbeds and appurtenances thereto, over, through and upon which the defendant operated engines, trains and cars under its control and direction.
5. During all times herein mentioned, the defendant was and is engaged in interstate commerce by providing railroad transportation.

## **JURISDICTION AND VENUE**

6. The plaintiff brings the First Cause of Action against the defendant for violation of the Federal Employers' liability Act, 45 U.S.C. §51 et seq. (FELA).

7. This Court has subject matter jurisdiction in this case pursuant to 45 U.S.C. §56.

8. Venue is proper in this District because a substantial part of the events or omissions giving rise to the claim occurred in this District, because defendant resides in this District and/or because defendant does business in this District.

## **FACTS**

9. At the time of the defendant's FELA violations, the plaintiff was employed by the defendant and qualified as an employee within the meaning of 45 U.S.C. § 51.

10. On September 20, 2019, the plaintiff was working as a Locomotive Engineer at the direction and training of defendant, while plaintiff was operating a train in the lead car, Car #7750, when the engineer's window would not close and he was required to hold the window closed while operating the train causing him to suffer injuries to his shoulder and neck.

11. Defendant's conduct, more specifically set forth below, caused, in whole or in part, the plaintiff to suffer various physical, psychological and economic harms.

12. Plaintiff's injuries include, but are not limited to, torn labrum and herniated cervical discs.

## **COUNT I**

### **Violation of FELA**

13. The plaintiff adopts by reference and realleges each and every allegation set forth in the foregoing paragraphs of this Complaint with the same force and effect as if set forth under this cause of action.

14. This Cause of Action is brought under the Federal Employers' Liability Act, (45 U.S.C. Sec. 51 et seq.).

15. On or about September 20, 2019, while the plaintiff, an employee of the defendant, was in the performance of his duties as a Locomotive Engineer travelling between NY Pennsylvania Station and Babylon, New York, the defendant, its agents, servants and employees, so negligently and carelessly conducted themselves toward the plaintiff:

- a. in failing to provide plaintiff with a reasonably safe place to work;
- b. in failing to warn plaintiff of broken window
- c. in failing to fix and/or repair broken window;;
- d. in failing to maintain window in Car # 7750;
- e. in failing to inspect and maintain window in Car #7750;
- f. in violating the Locomotive Inspection Act, currently codified at 49 U.S.C. Sec. 20701 et seq.
- g. in failing to maintain plaintiff's work place; and, so negligently failed and neglected to enact and enforce safety rules, regulations, procedures, and practices for activities carried out by its personnel at the said place, that all of the foregoing brought about severe and disabling injuries to plaintiff, as set forth above.

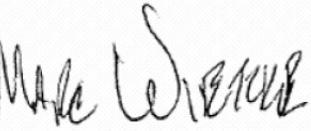
16. The relevant injuries occurred while the plaintiff was acting in the furtherance of interstate commerce or in work closely or substantially affecting the same.

17. The plaintiff was damaged thereby in a sum in excess of \$200,000.00.

WHEREFORE, plaintiff demands judgment against the defendant on Count I in a sum in excess of

TWO HUNDRED THOUSAND (\$200,000.00) DOLLARS; together with the costs and disbursements of this action.

Respectfully submitted

By: 

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